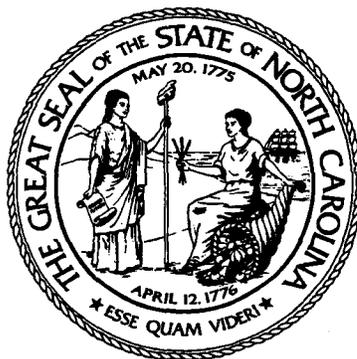


LEGISLATIVE RESEARCH COMMISSION

COMMITTEE ON CEMETERY ISSUES



REPORT TO THE
1998 SESSION OF THE
1997 GENERAL ASSEMBLY
OF NORTH CAROLINA

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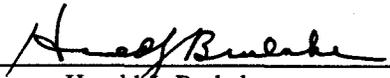


May 11, 1998

TO THE MEMBERS OF THE 1997 GENERAL ASSEMBLY (REGULAR SESSION 1998):

The Legislative Research Commission herewith submits to you for your consideration its interim report on the regulation of cemeteries. The report was prepared by the Legislative Research Commission's Committee on Cemetery Issues pursuant to G.S. 120-30.17(1).

Respectfully submitted,


Harold J. Brubaker
Speaker of the House


Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission



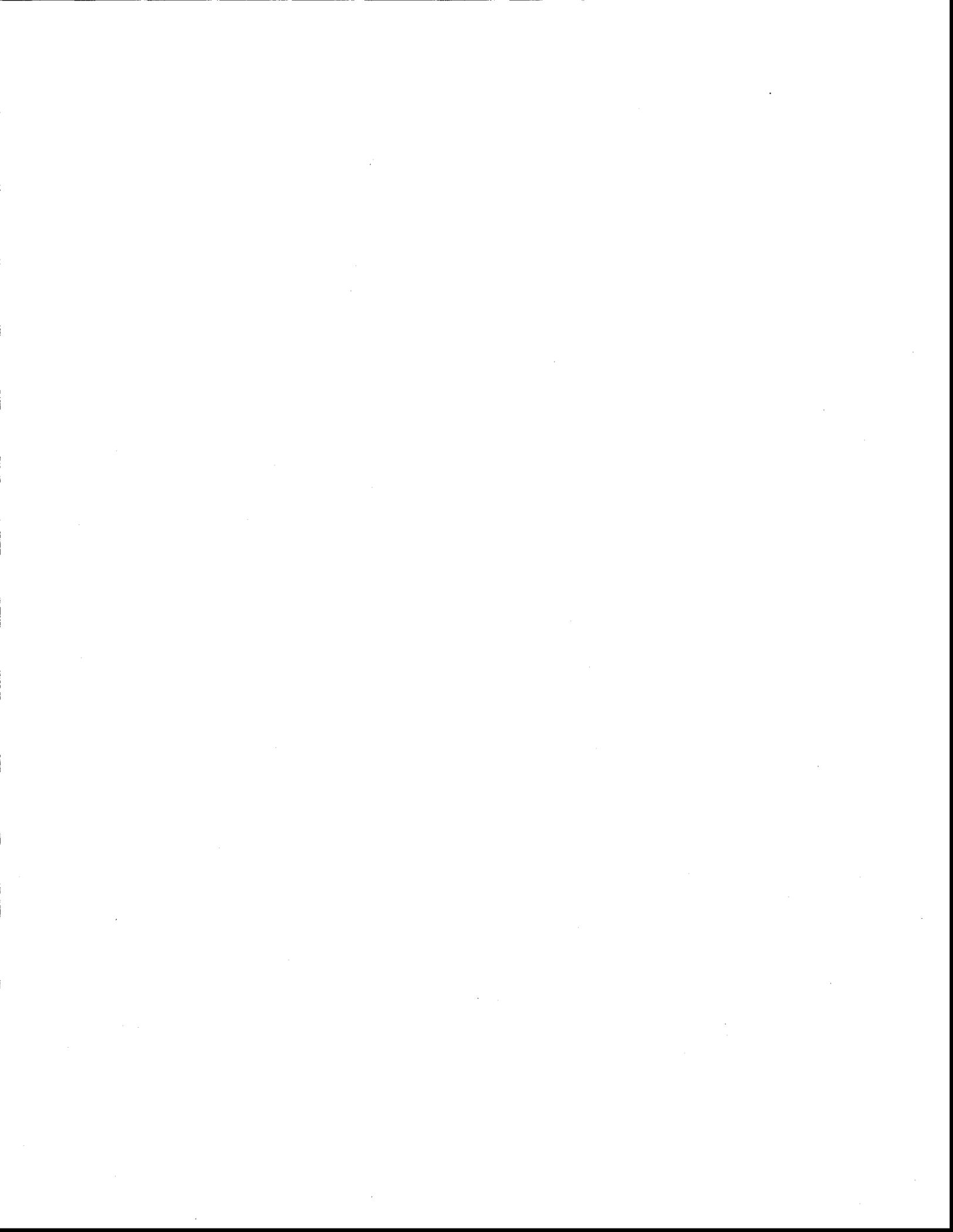


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1997-1999

LEGISLATIVE RESEARCH COMMISSION

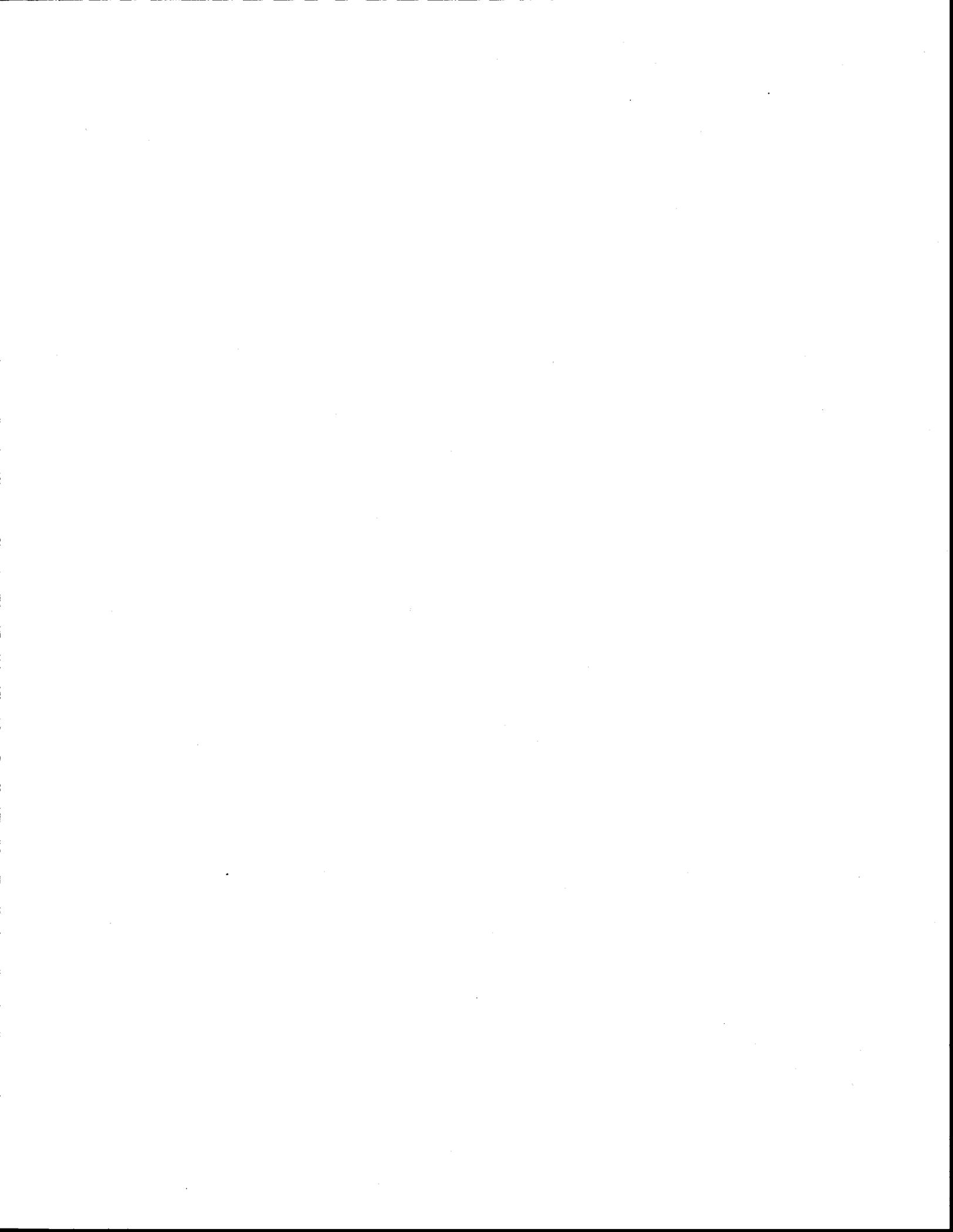
MEMBERSHIP

President Pro Tempore of the Senate
Marc Basnight, Cochair

Sen. Austin M. Allran
Sen. Frank W. Ballance, Jr.
Sen. Jeanne H. Lucas
Sen. R.L. Martin
Sen. Ed N. Warren

Speaker of the House of Representatives
Harold J. Brubaker, Cochair

Rep. Michael P. Decker, Sr.
Rep. Jerry C. Dockham
Rep. Beverly Earle
Rep. W. Eugene McCombs
Rep. Gregory J. Thompson



PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1997 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of the regulation of cemeteries was authorized by Part II, number 15 of Chapter 483 of the 1997 Session Laws. Part II of Chapter 483 allows for studies authorized by that Part for the Legislative Research Commission to consider House Bill 98 in determining the nature, scope and aspects of the study. House Bill 98 reads in part: "The Legislative Research Commission may study: (1) The duties and powers of the North Carolina Cemetery Commission; (2) The limitations on the authority and powers of the North Carolina Cemetery Commission to safeguard the investment of consumers in cemetery plots and perpetual care; (3) the need for additional legislation to protect consumers when a private cemetery ceases operation or is sold to a successor entity; (4) The need for requiring plats to be filed with the register of deeds of the county where the cemetery is located and the need to keep these plats up-to-date; and (5) Any other matters related to the regulation and operation of cemeteries in this State". The relevant portions of Chapter 483 and House Bill 98 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Regulation Grouping area under the direction of Representative Beverly M. Earle.

The Committee was chaired by Senator Luther Henry Jordan, Jr. and Representative Cary D. Allred. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

To execute the charge assigned to it by the Legislative Research Commission, the Committee met four times to prepare its recommendations to the 1997 General Assembly (1998 Regular Session): January 29, 1998, February 24, 1998, March 23, 1998 and April 23rd, 1998. The final meeting was to prepare its *Report*. Over a period of four months the Committee heard from numerous groups and persons, including the Cemetery Commission, consumer protection representatives from the Attorney General's Office, persons connected with the operation of cemeteries, and others that provide services to cemeteries. The Committee also solicited comments from citizens that had some experience with the cemetery industry.

There are a number of changes in the cemetery industry that prompted this legislative review. Burials are rising in North Carolina. Records show that in 1996, there were 52,000 burials and about 9,000 cremations in the State. That is up from previous years. Costs of burial has also increased. The nature of ownership of for-profit cemeteries is also changing. At least 30 of North Carolina's 174 privately owned cemeteries have been bought by three national death-care conglomerates in the past eight years in North Carolina. In the recent past, individual legislators, as well as the Attorney General's Office, have received increasing numbers of complaints from consumers. These complaints center on preneed sales, access to grave sites, including the opening and closing of grave places and the purchasing and installation of monuments. (Complaints received by the Committee are contained in the committee notebook on file in the Legislative Library.)

Some of the questions raised to the Committee over the period of its four meetings are:

1. Should the Cemetery Commission which now regulates 174 North Carolina commercial cemeteries, also oversee public and church cemeteries and businesses that sell monuments and other burial items;
2. Should the Cemetery Commission be combined with other State agencies involved in monitoring the death care industry;

The Committee examined the existing law governing cemeteries, Article 9 of Chapter 65 of the General Statutes, the North Carolina Cemetery Act. This law contains the law establishing the North Carolina Cemetery Commission and setting out its powers and duties. (Article 9 of Chapter 65 of the General Statutes and the rules of the Cemetery Commission are set out in Appendix C of this report.) This Commission is separate from the Board of Mortuary Science, which regulates funeral homes. The Committee heard that the Commission has almost no legal authority over the consumer protection issues that the Committee has identified, particularly those concerning competitive pricing, preneed contract disclosures, and access to grave places.

Because of its limited authority, the Commission forwards consumer complaints that lie outside its jurisdiction to the Attorney General's Office. The Committee heard from the Attorney General's Office that it has not, in the past, had staff sufficient to pursue these complaints vigorously. Although the Committee heard testimony that existing laws are sufficient to address all consumer protection issues, it also heard that these laws, the State and federal anti-trust and unfair trade practices laws, offer only theoretic protection, that the amounts that can be recovered are so little that, even trebled as these laws allow, few district attorneys will follow through to suit.

Iowa was identified as a state which had enacted some conservative consumer protection that, together with a few other changes, arguably might provide consumer protection without creating any real restraint of the cemeterians' trade.

The Committee was sensitive both to the needs expressed by cemeterians not to be unfairly restrained from amortizing costs over the broad range of services and goods they provide, though the public is often aware only of a few, and from providing professional perpetual care and to the needs of the consumers to have competitive pricing, adequate contract disclosures, and reasonable access to purchased grave places.

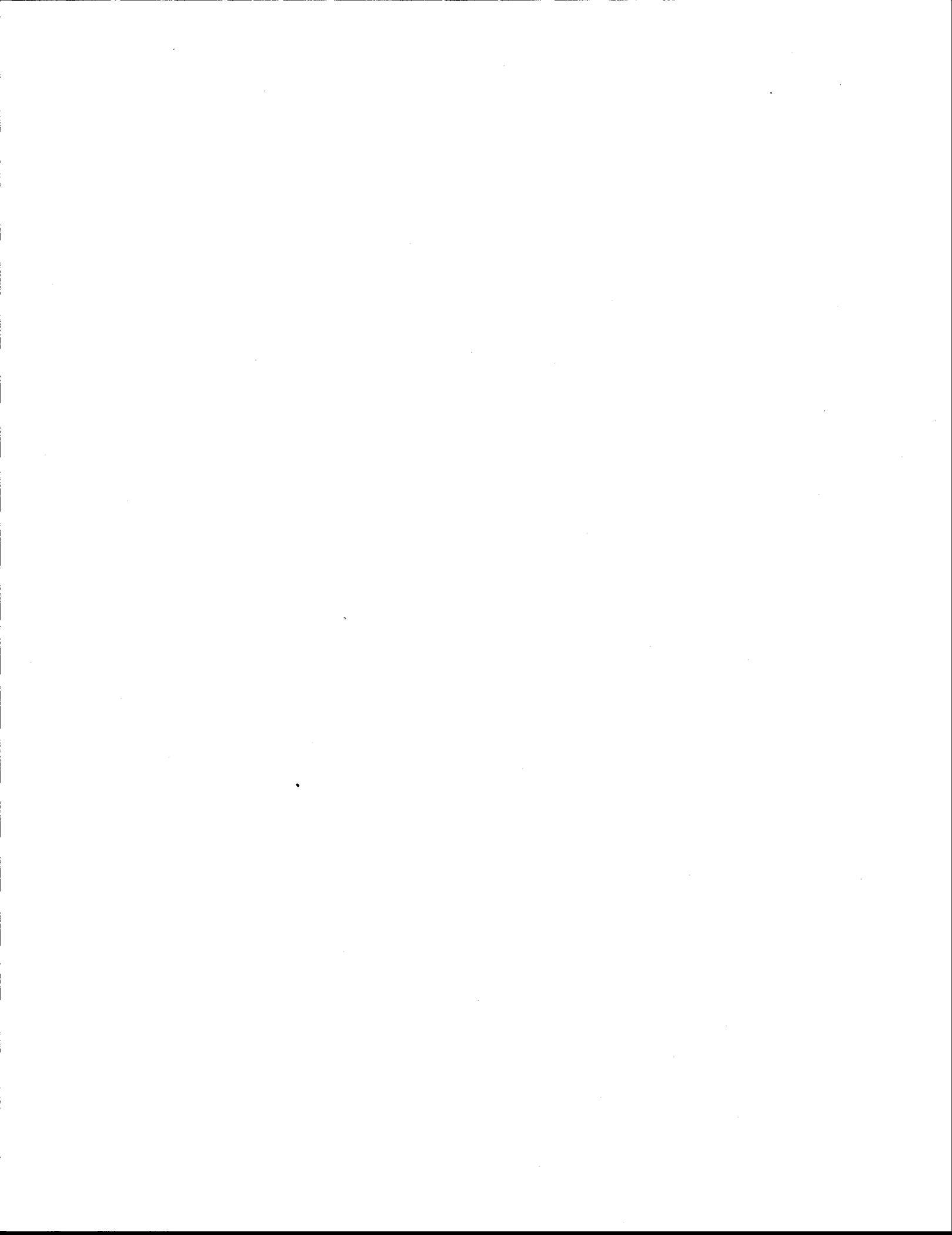
The Committee decided to prepare a draft report to the 1998 Short Session of the 1997 General Assembly, containing a draft bill to give to the Cemetery Commission some additional authority to address those consumer protection issues identified by the Committee. It decided to delay decisions on the other questions before it until after the Short Session.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATION: THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON CEMETERY ISSUES RECOMMENDS THE ENACTMENT OF A BILL ENTITLED" AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON CEMETERY ISSUES (legislative Proposal I, and Section-by-Section Analysis contained in Appendix D.)

The Committee found that there were cases in which consumers believed themselves to be unfairly treated at a very vulnerable time in their lives, particularly in cases involving preneed contract disclosures and pricing and resultant confusion at the time of need and access to purchased grave places, including openings and closings, and purchasing and installing monuments. The Committee further found that the Cemetery Commission does not have, currently, legal authority to protect consumers in these matters and that, though both State and federal unfair trade practices and anti-trust laws theoretically give consumers protection, this protection is not effective in enough cases because the dollar amounts that could be recovered under these laws are too small to encourage necessary and corrective legal actions.

The Committee found that by increasing the legal powers and duties of the Cemetery Commission to include ensuring that there is reasonable competition, that consumers and their providers of products and services have reasonable access to their purchased grave spaces, and that all cemetery contracts contain clear disclosures designed to ensure that both the consumer and the cemeterians understand exactly what is being offered and accepted and exactly what this will cost. The Committee found that these changes would offer consumers protection without unfairly restraining the cemeterians' trade.



APPENDIX A

RELEVANT PORTIONS OF THE 1997
STUDIES BILL, CHAPTER 483 OF
THE 1997 SESSION LAWS
(FIRST SESSION, 1997)



APPENDIX A

CHAPTER 483
1997 Session Laws

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO CONTINUE A COUNCIL, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO IMPOSE A MORATORIUM ON SERVICE CORPORATION CONVERSIONS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1997".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

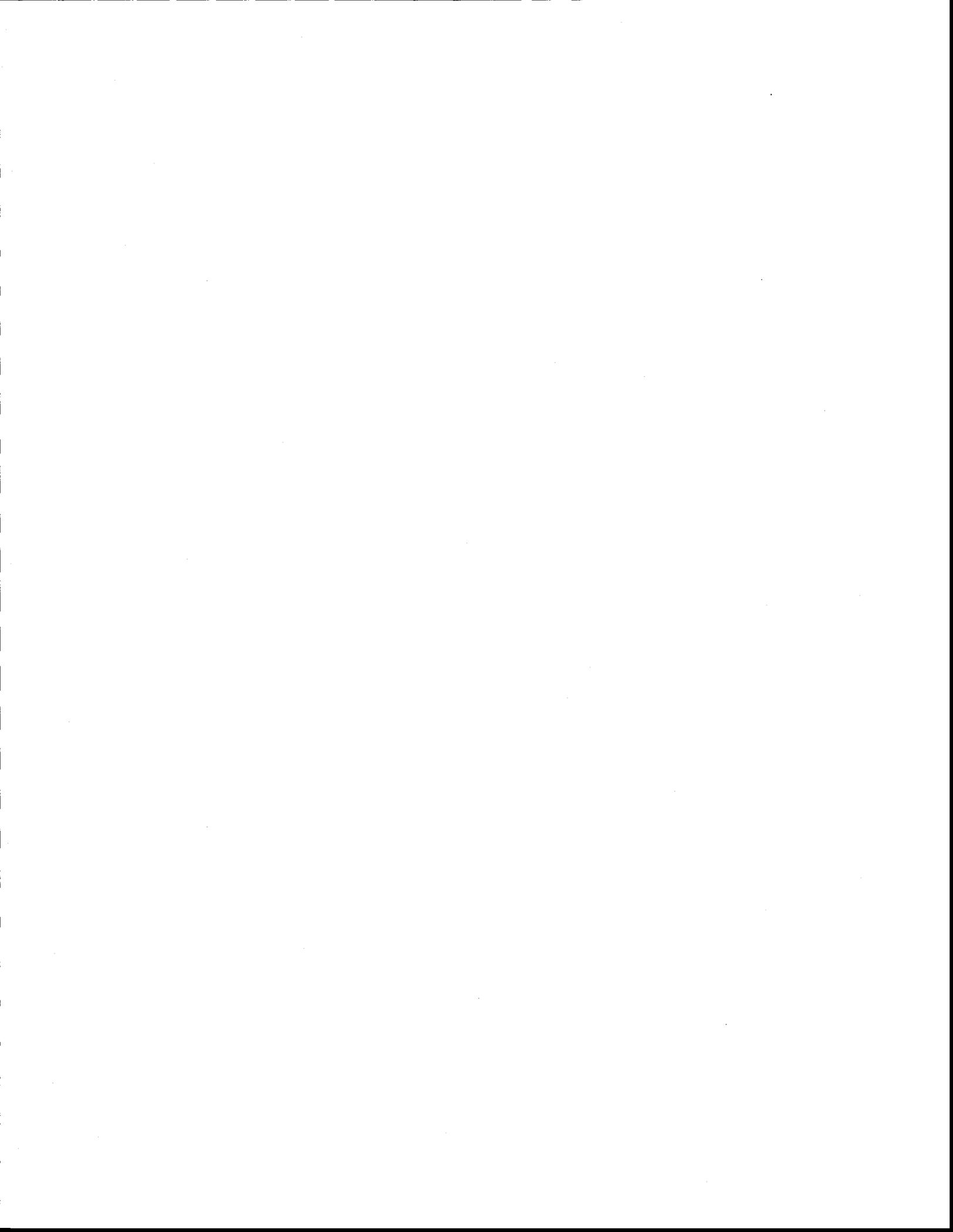
Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1997 Regular Session of the 1997 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study.

(15) Cemetery Commission and Cemetery regulation (H.B. 98 - Hill)

Section 2.11. Committee Membership. For each Legislative Research Commission committee created during the 1997-98 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Section 2.12. Reporting Date. For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120- 30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1997 General Assembly, 1998 Regular Session, or the 1999 General Assembly.

Section 2.13. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.



APPENDIX B

MEMBERSHIP OF THE LRC COMMITTEE ON CEMETERY ISSUES



APPENDIX B

**LEGISLATIVE RESEARCH COMMISSION
CEMETERY ISSUES COMMITTEE
1997-1999**

Pro Tem's Appointments

Sen. Luther H. Jordan, Jr., Co-Chair
Wilmington, NC

Sen. John M. Blust
Greensboro, NC

Ms. Helen Buckner
Siler City, NC

Mr. Elliott Futrell
Goldsboro, NC

Dr. Ray Howell
Lexington, NC

Mr. James Lofton
Wilmington, NC

Ms. Linda Roberts
Sanford, NC

Mr. Steve Staton
Rockwell, NC

LRC Member

Rep. Beverly Earle
Charlotte, NC

Speaker's Appointments

Rep. Cary D. Allred, Co-Chair
Burlington, NC

Rep. W. Pete Cunningham
Charlotte, NC

Rep. Howard J. Hunter, Jr.
Murfreesboro, NC

Dr. George Jones
Hendersonville, NC

Mr. Billy Lovette
Burlington, NC

Mr. Mac Pugh
Asheboro, NC

Rep. P. Wayne Sexton, Sr.
Stoneville, NC

Rep. William L. Wainwright
Havelock, NC

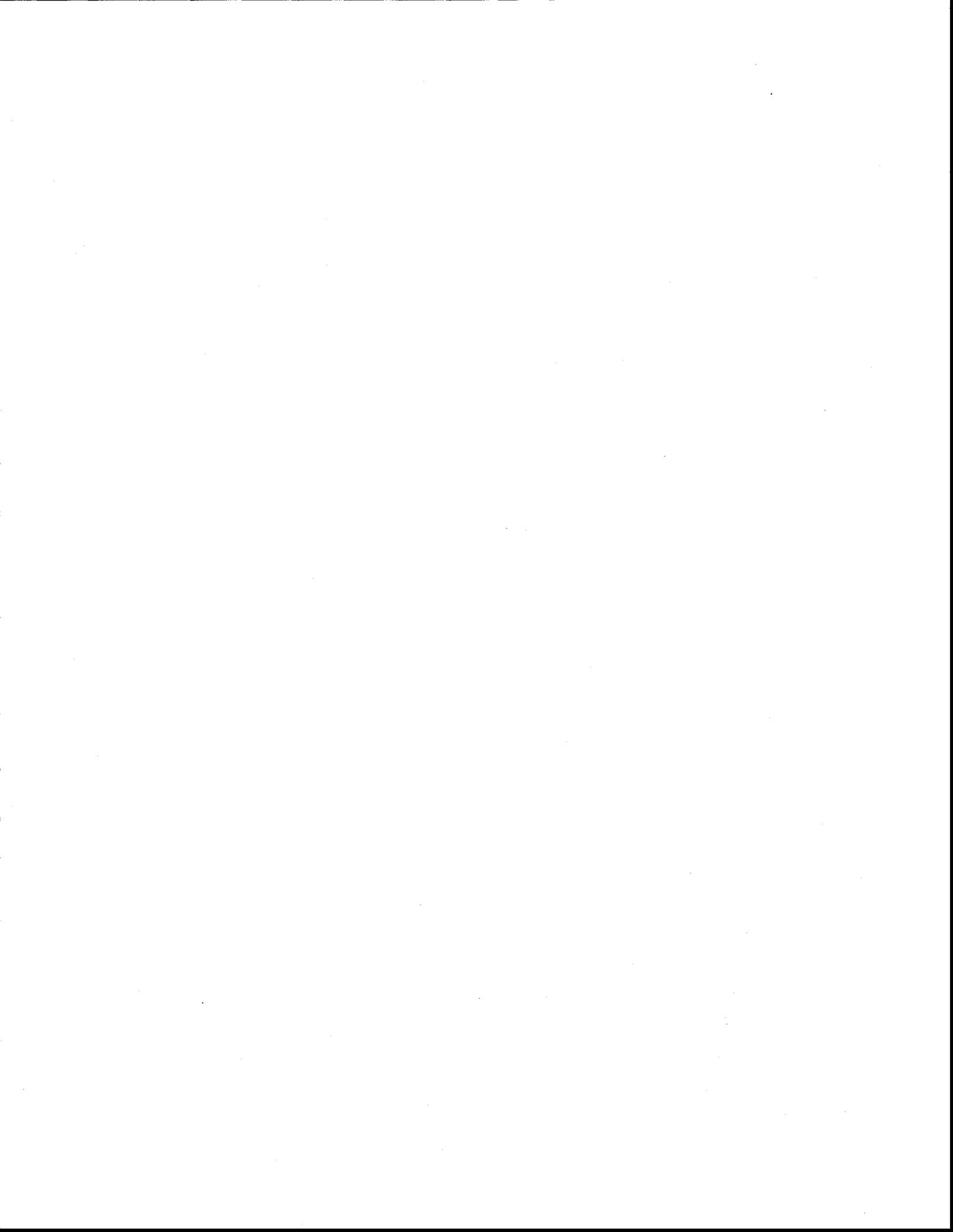
Staff:

Susan Sabre
Staff Attorney
Legislative Drafting

John Young
Committee Staff
Research Division

Clerk:

Cindy Keen



APPENDIX C

NORTH CAROLINA CEMETERY ACT
CEMETERY COMMISSION RULES



- (4) The request for reinterment contains a statement of the circumstances and reasons for reinterment; and
- (5) The funeral director has obtained all necessary permits for reinterment.

(b) If permission for reinterment is granted, an agreement shall be entered into between the veteran or his living representative, all living immediate family members, and any interested living family members, and the Assistant Secretary of Veterans Affairs. (1987 (Reg. Sess., 1988), c. 1051, s. 1.)

§ 65-43.6. State veterans cemeteries cost.

(a) There may be no charge for the grave site or the interment service of a qualified veteran. There may be a minimal charge, to be set by the Division of Veteran Affairs, for only the opening and closing of the grave of an eligible family member.

(b) All other costs, including funeral expenses and costs of the headstone, transportation of the remains, or grave liner or burial vault shall be paid out of allowances by the Veterans Administration or private funds.

(c) All costs resulting from damage to, or destruction or theft of a grave site, headstone, or any other grave monument may not be borne by the State. (1987 (Reg. Sess., 1988), c. 1051, s. 1.)

§§ 65-44, 65-45: Reserved for future codification purposes.

ARTICLE 9.

North Carolina Cemetery Act.

§ 65-46. Short title.

This Article 9 may be cited as "North Carolina Cemetery Act" (1975, c. 768, s. 1.)

Editor's Note. — This Article is former Article 7 of this Chapter as rewritten by Session Laws 1975, c. 768, s. 1, effective Sept. 1, 1975, and recodified.

Where appropriate, the historical citations to the sections of the former Article have been added to corresponding sections of the new Article.

CASE NOTES

Cited in *Strickland v. Tant*, 41 N.C. App. 534, 255 S.E.2d 325 (1979).

§ 65-47. Scope.

(a) The provisions of this Article shall apply to all persons engaged in the business of operating a cemetery as defined herein, except cemeteries owned and operated by governmental agencies or churches.

(b) Any cemetery beneficially owned and operated by a fraternal organization or its corporate agent for at least 50 years prior to September 1, 1975, shall be exempt from the provisions of Article 9 of this Chapter.

(c) The provisions of this Article shall not apply to persons licensed under 14 Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required.

services or selling items for which a license is required under G.S. 90-210.30 through 90-210.37. (1975, c. 768, s. 1; 1977, c. 686, s. 1.)

Editor's Note. — Former sections 65-36.1 through 65-36.8 were recodified as 90-210.30 through 90-210.37, effective October 1, 1985, by Session Laws 1985, c. 12, s. 1. References to these sections in the text above were changed to reflect their current placement in light of the 1985 recodification.

§ 65-48. Definitions.

As used in this Article, unless otherwise stated or unless the context or subject matter clearly indicates otherwise:

- (1) "Bank of belowground crypts" means any construction unit of belowground crypts acceptable to the Commission which a cemetery uses to initiate its belowground crypt program or to add to existing belowground crypt structures.
- (2) "Belowground crypts" consists of an interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and are also known as lawn crypts, westminsters or turf top crypts.
- (3) "Cemetery" means any one or a combination of more than one of the following in a place used or to be used and dedicated or designated for cemetery purposes:
 - a. A burial park, for earth interment.
 - b. A mausoleum.
 - c. A columbarium.
- (4) "Cemetery broker" means a legal entity engaged in the business of arranging sales of cemetery products between legal entities and which sale does not involve a cemetery company, but does not mean funeral establishments or funeral directors operating under G.S. 90-210.25, when dealing between legal entities wherein one such entity shall be members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being. The North Carolina Cemetery Act shall not apply to any cemetery broker selling less than five grave spaces per year.
- (5) "Cemetery company" means any legal entity that owns or controls cemetery lands or property and conducts the business of a cemetery, including all cemeteries owned and operated by governmental agencies, churches and fraternal organizations or their corporate agents for the duration of any sales and management contracts entered into with cemetery sales organizations or cemetery management organizations for cemetery purposes, or with any other legal entity other than direct employees of said governmental agency, church or fraternal organization.
- (6) "Cemetery management organization" means any legal entity contracting as an independent contractor with a cemetery company to manage a cemetery but does not mean individual managers employed by and contracting directly with cemetery companies operating under this Article.
- (7) "Cemetery sales organization" means any legal entity contracting with a cemetery which is exempt or not exempt

under this Article to conduct sales of cemetery products but does not mean individual salesmen or sales managers employed by and contracting directly with cemetery companies operating under this Article, nor does it mean general establishments or funeral directors operating under licenses authorized by G.S. 90-210.25 when dealing directly with a cemetery company and with members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being.

- (8) "Columbarium" means a structure or building substantially exposed aboveground intended to be used for the interment of the cremated remains of a deceased person.
- (9) "Commission" means the North Carolina Cemetery Commission.
- (10) "Grave space" means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of a deceased person.
- (11) "Human remains" or "remains" means the bodies of deceased persons, and includes the bodies in any stage of decomposition, and cremated remains.
- (12) "Mausoleum" means a structure or building substantially exposed aboveground intended to be used for the entombment of remains of a deceased person.
- (13) "Mausoleum section" means any construction unit of a mausoleum acceptable to the Commission which a cemetery uses to initiate its mausoleum program or to add to existing mausoleum structures.
- (14) "Person" means an individual, corporation, partnership, joint venture, or association.
- (15) "Vault" means a crypt or underground receptacle which is used for interment in the ground and which is designed to encase and protect caskets or similar burial devices. For the purposes of this Article, a vault is a preneed item until delivery to the purchaser. (1943, c. 644, s. 2; 1967, c. 1009, s. 2; 1971, c. 1149, s. 1; 1975, c. 768, s. 1; 1977, c. 686, ss. 2, 3.)

CASE NOTES

Above-Ground Burial Facilities Did Not Change the Nature of Cemetery Property Use. — Where the zoning ordinance provided for the continuation of pre-existing nonconforming uses of property, a cemetery construction of above-ground burial facilities related to the process by which the nonconforming activity was conducted and did not amount to a change in the nature and kind of use to which the property was devoted. *Stegall v. Zoning Bd. of Adjust-*

ment, 87 N.C. App. 359, 361 S.E.2d 309 (1987).

Cemetery was not estopped from asserting that no special use permit was required for the construction and installation of facilities for above-ground burial since such facilities were not an unlawful extension of its nonconforming use of its cemetery property. *Stegall v. Zoning Bd. of Adjustment*, N.C. App. 359, 361 S.E.2d 309 (1987).

§ 65-49. The North Carolina Cemetery Commission.

There is hereby established in the Department of Commerce a North Carolina Cemetery Commission with the power and duty to adopt rules and regulations to be followed in the enforcement of this Article. (1975, c. 768, s. 1; 1989, c. 751, s. 7(5); 1991 (Reg. Sess., 1992), c. 959, s. 19.)

CASE NOTES

Quasi-Judicial and Quasi-Legislative Duties. — The duties of the Commission are neither political nor executive. They are predominantly quasi-judicial and quasi-legislative. *James v. Hunt*, 43 N.C. App. 109, 258 S.E.2d 481 (1979), cert. denied, 299 N.C. 121, 262 S.E.2d 6 (1980).

Commission Must Act with Impartiality. — Since it is charged "with the power and duty to adopt rules and regulations to be followed in the enforcement" of the North Carolina Cemeteries

Act, including the licensing of cemeteries operating in this State, it must act with entire impartiality. *James v. Hunt*, 43 N.C. App. 109, 258 S.E.2d 481 (1979), cert. denied, 299 N.C. 121, 262 S.E.2d 6 (1980).

Members are required to exercise the judgment of experts in the field appointed by law and informed by experience. *James v. Hunt*, 43 N.C. App. 109, 258 S.E.2d 481 (1979), cert. denied, 299 N.C. 121, 262 S.E.2d 6 (1980).

§ 65-50. Cemetery Commission; members, selection, quorum.

The Cemetery Commission shall consist of seven members appointed by the Governor. Two members shall be owners or managers of cemeteries in North Carolina. Three members shall be selected from six nominees submitted by the North Carolina Cemetery Association. Two members shall be public members who have no financial interest in, and are not involved in management of, any cemetery or funeral related business. Four members of the initial Commission shall be appointed for a term to expire June 30, 1977, and three members shall be appointed for a term to expire June 30, 1976. At the end of the respective terms of office of the initial members of the Commission, their successors shall be nominated in the same manner, selected from the same categories and appointed for terms of four years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

A majority of the Commission shall constitute a quorum for the transaction of business.

At the first meeting of the Commission held after September 1, 1975, the Commission shall elect one of its members as its chairman and another as its vice-chairman, both to serve through June 30 of the next following year. Thereafter, at its first meeting held on or after July 1 of each year, the Commission shall elect from its members a chairman and vice-chairman to serve through June 30 of the next following year. (1975, c. 768, s. 1.)

CASE NOTES

Administrative Procedure Act Not Applicable to Removal. — This section gives the Governor the power to remove a member of the Cemetery Commission for cause "according to the provisions of § 143B-13 of the Executive Organization Act of 1973." There is no reference to the Administrative Procedure Act. Nor does § 143B-13(d), which gives the Governor power to remove for cause any member of a commission, refer to the Administrative Procedure Act. Had the General Assembly in-

tended for the Governor to be bound by the provisions of the Administrative Procedure Act, it could have referred to that act rather than the Executive Organization Act. Absent a specific legislative enactment requiring removals by the Governor to be subject to the Administrative Procedure Act, the act is not applicable to removals by the Governor. *James v. Hunt*, 43 N.C. App. 109, 258 S.E.2d 481 (1979), cert. denied, 299 N.C. 121, 262 S.E.2d 6 (1980).

§ 65-51. Principal office.

The principal office of the Commission shall be in the City of Raleigh, North Carolina. Notice of all regular and special meetings of the Commission shall be advertised 10 or more days in advance in at least three newspapers in North Carolina having inter-county circulation in the State. Each member of the Commission shall receive per diem and allowances in accordance with G.S. 138-5. The administrator of the Commission, other employees required to attend and legal counsel to the Commission shall be entitled to actual expenses while attending regular or special meetings of the Commission held other than in Raleigh, North Carolina. All expenses of the Commission shall be paid from funds coming to the Commission pursuant to this Article. (1975, c. 768, s. 1.)

§ 65-52. Regular and special meetings.

The Cemetery Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1975, c. 768, s. 1.)

§ 65-53. Powers.

In addition to other powers conferred by this Article, the Cemetery Commission shall have the following powers and duties:

- (1) The administrator shall be appointed by the Governor upon recommendation of the Cemetery Commission. The compensation of the administrator and such other personnel as is necessary to operate the Commission is subject to the provisions of Chapter 126 of the General Statutes of North Carolina. The Commission is authorized and empowered to employ such staff, including legal counsel, as may be necessary.
- (2) To examine a cemetery company's records when a person applies for a change of control of the company.
- (3) Investigate, upon its own initiative or upon a verified complaint in writing, the actions of any person engaged in the business or acting in the capacity of a licensee under this Article. The license of a licensee may be revoked or suspended for a period not exceeding two years, or until com-

pliance with a lawful order imposed in the final order of suspension, or both; where the licensee in performing or attempting to perform any of the acts specified in this Article has been guilty of:

- a. Failing to pay the fees required herein;
- b. Failing to make any reports required by this Article;
- c. Failing to remit to the care and maintenance trust fund, merchandise trust fund, or preconstruction trust fund the required amounts;
- d. Making any substantial misrepresentation;
- e. Making any false statement of a character likely to influence or persuade;
- f. A continued and flagrant course of misrepresentation or making of false promises through cemetery agents or salesmen;
- g. Violating any provision of this Article or rule promulgated by the Commission; or
- h. Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(4) In all proceedings under this Article for the revocation or suspension of licenses, the provisions of Chapter 150B of the General Statutes shall be applicable.

(5) At such time as the Commission finds it necessary it may bring an action in the name of the State in the court of the county in which the place of business is located against such person to enjoin such person from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper; provided, that before any such action is brought the Commission shall give the cemetery at least 20 days' notice in writing, stating the alleged violation and giving the cemetery an opportunity within the 20-day period to cure the violation. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, the court shall have the power and jurisdiction to impound and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this Article through or by means of the use of said property and business. The Commission may institute proceedings against the cemetery or its officers, whereafter an examination, pursuant to this Article, a shortage in the care and maintenance trust fund, merchandise trust fund or mausoleum and belowground crypts preconstruction trust fund is discovered, to recover said shortage.

(6) Whenever any special additional audit or examination of a licensee's premises, facilities, books or records is necessary because of the failure of the licensee to comply with the requirements imposed in this Article or by the rules and regulations of the Commission, to charge a fee based on the cost of the special examination or audit, taking into consid-

- eration the salary of any employees involved in the special audit or examination and any expenses incurred.
- (7) Promulgate rules and regulations requiring licensees to file with the Commission plans and specifications for the minimum quality of any product sold. The sale of any product for which plans and specifications required by the rules and regulations have not been filed or sale of any product of a lesser quality than the plans and specifications filed with the Commission is a violation of this Article.
 - (8) When the Commission finds that failure by a licensee to maintain a cemetery properly has caused that cemetery to be a public nuisance or a health or safety hazard, the Commission may bring an action for injunctive relief, against the responsible licensee, in the superior court of the county in which the cemetery or any part thereof is located. (1943, c. 644, s. 17; 1971, c. 1149, s. 8; 1973, c. 732, s. 2; 1975, c. 768, s. 1; 1977, c. 686, ss. 4-6; 1979, c. 888, ss. 1-3; 1981 (Reg. Sess., 1982), c. 1153; 1987, c. 488, s. 8; c. 827, s. 1; 1991, c. 653, s. 3.)

§ 65-54. Annual budget of Commission; collection of funds.

The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from yearly fees and from any other sources provided in this Article. On or before July 1 of each year, each licensed cemetery shall pay a license fee to be set by the Commission in an amount not to exceed three hundred dollars (\$300.00). In addition, each licensed cemetery shall pay to the Commission an inspection fee for each grave space, niche, or mausoleum crypt sold and shall pay a fee for each vault, niche, belowground crypt, mausoleum crypt, memorial, or opening and closing of a grave space that is included in a preneed cemetery contract. The inspection fee for each grave space, niche, or mausoleum crypt is payable when the item is sold and may not exceed two dollars (\$2.00). The fee for each of the listed items that are included in a preneed cemetery contract is payable when the contract is made and may not exceed five dollars (\$5.00). (1975, c. 768, s. 1; 1977, c. 686, s. 7; 1987, c. 488, s. 1; 1991, c. 653, s. 1.)

§ 65-55. License; cemetery company.

(a) No legal entity shall engage in the business of operating a cemetery company except as authorized by this Article and without first obtaining a license from the Commission.

(b) Any legal entity wishing to establish a cemetery shall file a written application for authority with the Commission on forms provided by the Commission.

(c) Upon receipt of the application and filing fee of eight hundred dollars (\$800.00), the Commission shall cause an investigation to be made to establish the following criteria for approval of the application:

- (1) The creation of a legal entity to conduct cemetery business, and its proposed financial structure.
- (2) A perpetual care trust fund agreement, with an initial deposit of not less than fifty thousand dollars (\$50,000) and

with a bank cashier's check or certified check attached for the amount made payable to the trustee. The trust fund agreement must be executed by the applicant, accepted by the trustee, and conditional only upon approval of the application.

(3) A plat of the land to be used for the cemetery, showing the location of the cemetery and the access roads to the cemetery.

(4) Designation by the legal entity wishing to establish a cemetery of a general manager. The general manager must be a person of good moral character and have at least one year's experience in cemeteries.

(5) Development plans sufficient to ensure the community that the cemetery will provide adequate cemetery services and that the property is suitable for use as a cemetery.

(d) The Commission, after receipt of the investigating report, shall grant or refuse to grant the authority to organize a cemetery based upon the criteria set forth in G.S. 65-55(c).

(e) If the Commission intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and a place for a hearing before the Commission and a summary statement of the reasons for the proposed denial. The notice of intent shall be mailed by certified mail to the applicant at the address stated in the application at least 15 days prior to the scheduled hearing date. The applicant shall pay the costs of this hearing as assessed by the Commission unless the applicant notifies the Commission by certified mail at least five days prior to the scheduled hearing date that a hearing is waived. Any appeals from the Commission's decision shall be to the court having jurisdiction of the applicant or the Commission.

(f) If the Commission intends to grant the authority, it shall give written notice that the authority to organize a cemetery has been granted and that a license to operate will be issued upon the completion of the following:

- (1) Establishment of the care and maintenance trust fund and receipt by the Commission of a certificate from the trust company, certifying receipt of the initial deposit required under this Article.
- (2) Full development, ready for burial, of not less than two acres including a completed paved road from a public roadway to said developed section, certified by inspection of the Commission or its representative.
- (3) A description, by metes and bounds, of the acreage tract of such proposed cemetery, together with evidence, by title insurance policy or by certificate of an attorney-at-law, certifying that the applicant is the owner in fee simple of such tract of land, which must contain not less than 30 acres, and that the title to not less than 30 acres is free and clear of all encumbrances. In counties with a population of less than 35,000 population according to the latest federal decennial census the tract need be only 15 acres.
- (4) A plat of the cemetery showing the number and location of all lots surveyed and permanently staked for sale. (1943, c. 644, s. 9; 1957, c. 529, s. 3; 1967, c. 1009, s. 9; 1975, c. 768, s. 1; 1977, c. 686, s. 8; 1987, c. 488, s. 2; 1991, c. 653, s. 2.)

§ 65-56. Existing companies; effect of Article.

Existing cemetery companies at the time of the adoption of this Chapter shall continue in full force and effect and be granted a license but shall hereafter be operated in accordance with the provisions of Article 9 of this Chapter. (1975, c. 768, s. 1.)

§ 65-57. Licenses for sales organizations, management organizations and brokers.

(a) No legal entity shall engage in the business of a cemetery sales organization, a cemetery management organization or a cemetery broker except as authorized by this Article, and without first obtaining a license from the Commission.

(b) Any legal entity wishing to establish and operate the business of a cemetery sales organization, a cemetery management organization or a cemetery broker shall file a written application for authority with the Commission on forms provided by the Commission which must contain such of the following documents and information as may be required by the Commission:

- (1) The appointment of a North Carolina resident to receive service of any lawful process in any noncriminal proceedings arising under this Chapter against the applicant, its principal owners, principal stockholders, directors and general manager or their personal representatives.
- (2) The states or other jurisdictions in which the applicant presently is conducting the business activity applied for or other similar businesses and any adverse order, judgment or decree entered against the applicant in each jurisdiction or by any court.
- (3) The applicant's name, address and the form, date and jurisdiction of the organization and the address of each of its offices within or without this State.
- (4) The name, address, principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions.
- (5) Copies of the articles of incorporation or articles of partnership or joint venture agreement or other instrument establishing the legal entity of the applicant.

(c) The application shall be accompanied by an initial filing fee of four hundred dollars (\$400.00) for cemetery sales organization and cemetery management organization and an initial filing fee of two hundred dollars (\$200.00) for a cemetery broker. If ninety percent (90%) or more of the applicant is owned by an existing cemetery company operating under the North Carolina Cemetery Act, then the initial filing fee shall be one half of the sums set out herein. On or before July 1 of each year, each licensed cemetery sales organization, cemetery management organization, or cemetery broker shall pay a license renewal fee of one hundred dollars (\$100.00) per year.

(d) Upon receipt of the application and filing fee, the Commission shall cause an investigation to be made of the legal entity to conduct the business applied for and the qualification of said legal entity to do business in North Carolina.

(e) The Commission, after receipt of the investigation report, shall grant or refuse to grant the authority to organize the organi-

ation applied for after it determines that the applicant possesses good character and general fitness or, in the case of a business association, employs and is directed by personnel of good character and general fitness.

(f) If the Commission intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and a place for hearing before the Commission and a summary statement of the reasons for the proposed denial. The notice of intent shall be mailed by certified mail to the applicant at the address stated in the application at least 15 days prior to the scheduled hearing date. Any appeals from the Commission's decision shall be to the court having jurisdiction of the applicant, or in the event of an out-of-state applicant, then to the court having jurisdiction of the Commission.

(g) If the Commission intends to grant the authority, it shall give written notice that the authority to organize the business applied for has been granted and that a license to operate will be issued upon presentment to the Commission of a statement of employment between the applicant and the cemetery or cemeteries to be serviced thereby.

(h) (Effective October 1, 1994 — See editor's note) Any person or any cemetery sales organization or any cemetery management organization or any cemetery broker violating the provisions of this section is guilty of a Class 1 misdemeanor, and shall be subject to revocation of the license to operate. (1975, c. 768, s. 1; 1977, c. 686, ss. 9, 10; 1993, c. 539, s. 500; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would

be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor," for "misdemeanor, punishable as provided in G.S. 14-3" in subsection (h).

§ 65-58. Licenses for persons selling preneed grave space.

(a) No person shall offer to sell preneed grave spaces, mausoleum crypts, niches, memorials, vaults or any other preneed cemetery merchandise or services under any plan authorized for any cemetery, cemetery sales group, or cemetery management group, before obtaining a license from the Commission.

(b) Persons wishing to obtain a license shall file a written application with the Commission on forms provided by the Commission. The Commission may require such information and documents as it deems necessary to protect the public interest.

(c) The application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to cover the expenses of processing and investigation. After processing and investigation the Commission shall grant, or refuse to grant, the license applied for. The annual license fee shall be set by the Commission but shall not exceed ten dollars (\$10.00).

(d) If the Commission refuses to grant the license applied for, it shall give written notice to the applicant. The notice shall state a time and a place for hearing before the Commission, and a summary statement of the reasons for the refusal to grant the license. The notice shall be mailed by registered mail or certified mail to the applicant at the address stated in the application at least 30 days prior to the scheduled hearing date.

(e) If the Commission intends to grant the license, it shall give written notice that the license will be issued upon presentment to the Commission of a duly executed statement of employment between the applicant and the cemetery or cemeteries to be serviced thereby.

(f) The provisions of Article 4 of Chapter 150B of the General Statutes of North Carolina relating to "Judicial Review" shall apply to appeals or petitions for judicial review by any person or persons aggrieved by an order or decision of the Commission.

(g) Repealed by Session Laws 1977, c. 686, s. 12. (1943, c. 644, s. 15; 1967, c. 1009, s. 14; 1975, c. 768, s. 1; 1977, c. 686, ss. 11, 12; 1987, c. 827, s. 1.)

§ 65-59. Application for a change of control; filing fee.

A person who proposes to acquire control of an existing cemetery company, whether by purchasing the capital stock of the company, purchasing an owner's interest in the company, or otherwise acting to effectively change the control of the company, shall first make application on a form supplied by the Commission for a certificate of approval of the proposed change of control. The application shall contain the name and address of each proposed new owner. The Commission shall issue a certificate of approval only after it determines that the proposed new owners are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in control. An application for approval of a change of control must be completed and accompanied by a filing fee of two hundred dollars (\$200.00). (1975, c. 768, s. 1; 1987, c. 488, s. 4; 1991, c. 653, s. 4.)

§ 65-60. Records.

A record shall be kept of every burial in the cemetery of a cemetery company, showing the date of burial, name of the person buried, together with lot, plot, and space in which such burial was made therein. All sales, trust funds, accounting records, and all other records of the licensee shall be available at the licensee's principal place of business in this State and shall be readily available at all reasonable times for examination by an authorized representative of the Commission. (1975, c. 768, s. 1.)

CASE NOTES

Stated in Stegall v. Zoning Bd. of Ad-
justment, 87 N.C. App. 359, 361 S.E.2d
909 (1987).

§65-60.1. Trustees; qualifications; examination of records; enforcement.

(a) The term "corporate trustee" as used in this Article shall mean either a bank or trust company authorized to do business in North Carolina under the supervision of the Commissioner of Banks or any other corporate entity; provided that any corporate entity other than a bank or trust company which acts as trustee under this Article shall first be approved by the Cemetery Commission and shall be subject to supervision by the Cemetery Commission as provided herein.

(b) Any corporate entity, other than a bank or trust company, which desires to act as trustee for cemetery funds under this Article shall make application to the Commission for approval. The Commission shall approve the trustee when it has become satisfied that:

- (1) The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others.
- (2) The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized.
- (3) The applicant will act as trustee for cemetery funds which will exceed five hundred thousand dollars (\$500,000) in the aggregate.
- (4) The applicant is authorized to do business in North Carolina and has adequate facilities to perform its duties as trustee.

(c) Any trustee under this Article, other than a bank or trust company under the supervision of the Commissioner of Banks, shall maintain records relative to cemetery trust funds as the Commission may by regulation prescribe. The records shall be available at the trustee's place of business in North Carolina and shall be available at all reasonable times for examination by a representative of the Commission. The records shall be audited annually, within 90 days from the end of the trust fund's fiscal year, by an independent certified public accountant, and a copy of the audit report shall be promptly forwarded to the Commission.

(d) Whenever it appears that an officer, director, or employee of a trustee, other than a bank or trust company, is dishonest, incompetent, or reckless in the management of a cemetery trust fund, the Commission may bring an action in the courts to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court (1977, c. 686, s. 15; 1979, c. 888, s. 9.)

It provided, however, that cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(c) may be invested and reinvested in accordance with G.S. 36A-2

§ 65-61. Required trust fund for care and maintenance; remedy of Commission for non-compliance.

No cemetery company shall be permitted to establish, or operate if already established, a cemetery unless provision is made for the future care and maintenance of such cemetery by establishing a trust fund and designating a corporate trustee to administer said fund in accordance with a written trust agreement. If any cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this Article, the Commission, after reasonable notice, shall proceed to enforce compliance under the powers vested in it under this Article; provided any nonprofit cemetery corporation, incorporated and engaged in the cemetery business continuously since and prior to 1915 and whose current trust assets exceed seven hundred fifty thousand dollars (\$750,000) shall not be required to designate a corporate trustee. The trust fund agreement shall contain and include the following: name, location, and address of both the licensee and the trustee showing the date of agreement together with the amounts required deposited as stated in this Article. No person shall withdraw or transfer any portion of the corpus of the care and maintenance trust fund without first obtaining written consent from the Commission. (1943, c. 644, s. 9; 1957, c. 529, s. 3; 1967, c. 1009, s. 9; 1975, c. 768, s. 1; 1977, c. 686, s. 13.)

§ 65-62. Individual contracts for care and maintenance.

At the time of making a sale or receiving the initial deposit hereunder, the cemetery company shall deliver to the person to whom such sale is made, or who makes such deposit, an instrument in writing which shall specifically state that the net income of the care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery, for reasonable costs of administering such care and maintenance and for reasonable costs of administering the trust fund. (1975, c. 768, s. 1.)

§ 65-63. Requirements for perpetual care fund.

A cemetery company may not cause or permit advertising of a perpetual care fund in connection with the sale or offer for sale of its property unless the amount deposited in the fund is at least forty dollars (\$40.00) per grave space, niche, or mausoleum crypt sold. Nothing may prohibit an individual cemetery from requiring a perpetual care deposit for grave memorial markers to be deposited in the perpetual care fund so long as the same assessment is uniformly applied to all grave memorial markers installed in the cemetery. (1943, c. 644, s. 5; 1957, c. 529, s. 1; 1967, c. 1009, s. 3; 1971, c. 1149, s. 3; 1975, c. 768, s. 1; 1979, c. 888, s. 4; 1987, c. 488, s. 5; 1991, c. 653, s. 5.)

65-64. Deposits to perpetual care fund.

(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring such payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a penalty of one dollar (\$1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36-47. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the said net income is not sufficient to pay such fees and other expenses, the same shall be paid by the cemetery company.

36 A-90, provided, further that cemetery trust funds shall be held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(2) may be invested in accordance with G.S. 36A-2.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then said cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to ten dollars (\$10.00) per space for all spaces either previously sold or contracted for sale in said cemetery at the time of conversion or twenty-five thousand dollars (\$25,000), whichever sum is greater.

(c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of said burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of said burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars (\$150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee as directed by the company. Funds in a trust fund designated as Trust Fund "A" may not be invested in another cemetery company, and are subject to the requirements of funds deposited in the original perpetual care trust fund.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do

in accordance with G.S. 36A-2 cemetery 27

business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund "A." (1943, c. 644, s. 10; 1957, c. 529, s. 4; 1967, c. 1009, s. 10; 1971, c. 1149, s. 5; 1975, c. 768, s. 1; 1977, c. 686, s. 14; 1979, c. 888, ss. 5, 6; 1987, c. 488, ss. 3, 6; 1991, c. 653, s. 6; 1991 (Reg. Sess.; 1992), c. 1007, s. 35.)

Editor's Note. — Section 36-47, referred to in subsection (a) of this section, has been repealed. See now § 36A-90.

§ 65-65. Trust fund; financial reports.

Within 60 days after the end of the calendar or fiscal year of the cemetery company, the trustee shall furnish adequate financial reports with respect to the care fund on forms provided by the Commission. However, the Commission may require the trustee to make such additional financial reports as it may deem advisable. (1975, c. 768, s. 1.)

§ 65-66. Receipts from sale of personal property or services; trust account; penalties.

(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless such person or legal entity holds, controls or manages said funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a certificate under G.S. 90-210.30 through 90-210.37. *license under Article 13 D of Chapter 90 of the General Statutes*

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of a deceased human being wherein the use of the personal property or the furnishing of services is not immediately requested or required, shall comply with the following requirements and conditions:

- (1) The cemetery company or other entity shall deposit an amount equal to sixty percent (60%) of all proceeds received on such contracts into a trust account, either in the form of an account governed by a trust agreement and handled by a corporate trustee or in the form of a passbook savings account, certificates of deposit for time certificates and/or money-market certificates with a licensed and insured bank or savings institution located in the State of North Carolina until the amount deposited equals six

- percent (60%) of the actual sale price of the property or services sold. Such accounts and/or deposits shall be in the name of the cemetery company or other entity in a form which will permit withdrawals only with the participation and consent of the Cemetery Commission as required by subdivision (4) of this subsection.
- (2) All funds received on account of a contract for the sale of such personal property or services, whether the funds be received directly from the purchaser or from the sale or assignment of notes entered into by the purchase or otherwise, shall be deposited into the trust account as required by subdivision (1) of this section.
- (3) All deposits required herein shall be made into the trust account so established on or before the last day of the month following receipt of the funds by the cemetery company or other entity.
- (4) Withdrawals from a trust account may be made by the depositor, but only with the written approval of the Commission or officer or employee of the Commission authorized to act for the Commission. Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the Commission. The Commission shall promulgate rules and regulations governing withdrawals from trust accounts, including time and frequency of withdrawals, notice to the Commission prior to withdrawals, the number and identity of persons other than the owner who are authorized by the owner to make withdrawals, the officers and employees of the Commission authorized to approve withdrawals, and any other matters necessary to implement the provisions of this subdivision. Withdrawals will not be allowed if the amount remaining in the trust account would fall below sixty percent (60%) of all proceeds received on account of contracts for the sale of such personal property or services.
- (5) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income if any, earned thereon by the trust account.
- (6) Every year after September 1, 1975, the cemetery company, the trustee or other entity shall within 75 days after the end of the calendar year, file a financial report of the trust funds with the Commission, setting forth the principal thereof, the investments and payments made, the income earned and disbursed; provided, however, that the Commission may require the cemetery, trustee, or other entity to make such additional financial reports as it may deem advisable.
- (c) Whenever a contract for the sale of personal property and/or services allocates payments to apply to one item at a time under a specific schedule, the contract shall be considered divisible. Title to

each item of personal property or the right to each item of service shall pass to the purchaser upon full payment for that item regardless of the remaining balance on other items under the same contract.

(d) Any contract for the sale of personal property and/or service shall state separate costs for each item of personal property, for each act of installation required by the contract, and for each other item of services included in the contract.

(e) All contracts for the sale of personal property and/or service must be printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations adopted pursuant to that act.

(f) In the event of prepayment, interest charged shall be no more than the interest earned on the unpaid balance computed on a per cent per month basis for each month or part of a month up to the date of final payment. Any excess interest which has been paid by the purchaser must be refunded to him, his assigns, or his representative within 30 days after the final payment. No penalty or additional charge for prepayment may be required.

(g) In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services. Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers.

(h) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing contracts for the sale of the property or services as herein contemplated. The written report of such examination shall be filed in the office of the Commission. Any person or entity being examined shall produce the records of the company needed for such examination.

(i) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(j) Repealed by Session Laws 1991, c. 653, s. 7.

(k) Nothing in G.S. 65-66 and subsections thereunder shall apply to persons or legal entities holding licenses or certificates under G.S. 90-210.20 and 90-210.27 when performing services or selling items authorized by said sections.

(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect a penalty of twenty-five dollars (\$25.00) per day for each day of delinquency.

(m) Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company or other entity shall refund to purchaser the principal amount on deposit in the trust account for the benefit on any undelivered merchandise or services. This amount

Article 130 of Chapter 90 of the General Statute in which a change is proposed under that Article.

no other obligations owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the contract. The seller may not terminate the contract without complying with this subsection. (1975, c. 768, s. 1; 1979, c. 888, s. 7; 1987, c. 488, s. 7; 1991, c. 653, s. 7.)

Editor's Note. — Former sections 65-36.1 through 65-36.8 were recodified as 90-210.30 through 90-210.37, effective October 1, 1985, by Session Laws 1985, c. 12, s. 1. References to these sec-

tions in the text above were changed to reflect their current placement, in light of the 1985 recodification.

Section 90-210.30, referred to in this section, has been repealed.

§ 65-67. Applications for license.

Applications for renewal license must be submitted on or before July 1 each and every year in the case of an existing cemetery company. Before any sale of cemetery property in the case of a new cemetery company or a change of ownership or control as indicated in G.S. 65-59, an application for license must be submitted and license issued. (1975, c. 768, s. 1.)

§ 65-68. License not assignable or transferable.

No license issued under G.S. 65-67 shall be transferable or assignable and no licensee shall develop or operate any cemetery authorized by this Article under any name or at any location other than that contained in the application for such license. (1975, c. 768, s. 1.)

§ 65-69. Minimum acreage; sale or disposition of cemetery lands.

(a) Each licensee shall set aside a minimum of 30 acres of land for use by said licensee as a cemetery, and shall not sell, mortgage, lease or encumber the same.

(b) The fee simple title, or lesser estate, in any lands owned by licensee and dedicated for use by it as a cemetery, which are contiguous, adjoining, or adjacent to the minimum of 30 acres described in subsection (a), may be sold, conveyed, or disposed of, or any part thereof, by the licensee, for use by the new owner for other purposes than as a cemetery; provided that no bodies have been previously interred therein; and provided further, that any and all titles, interests, or burial rights which may have been sold or contracted to be sold in such lands which are the subject of such sale shall be conveyed to and vested in the licensee prior to consummation of any such sale, conveyance or disposition.

(c) Any licensee may convey and transfer to a municipality or county its real and personal property together with moneys deposited with the trustee; provided said municipality or county will accept responsibility for maintenance thereof and prior written approval of the Commission is first obtained.

(d) The provisions of subsections (a) and (b) relating to a requirement for minimum acreage shall not apply to those cemeteries licensed by the Commission on or before July 1, 1967, which own or control a total of less than 30 acres of land; provided that such cemeteries shall not dispose of any of such lands. A nongovernment

lien or other interest in land acquired in violation of this section is void. (1975, c. 768, s. 1; 1991, c. 653, s. 8.)

§ 65-70. Construction of mausoleums and below-ground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirements.

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first such sale. The construction of such mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed one year, may be granted by the Commission for good reasons shown.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of the merchandise trust account or such other trust accounts or funds that may be required by law. The personal representative of any purchaser of such space who dies before completion of construction shall be entitled to a refund of all moneys paid for such space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust account shall be computed as to said section or bank of crypts and such trust account payments must be made on or before the last day of the calendar month following receipt by the cemetery company or its agent of each payment. The trust account portion of each such payment shall be computed by dividing the cost of the project plus twenty percent (20%) of said cost, as computed by a licensed contractor, engineer or architect, by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

Cost plus twenty percent (20%) divided by number of crypts
cost per unit

Cost per unit divided by contract sales price = percentage
Percentage x payment received = deposit required to preconstruction trust account.

(d) The cemetery company shall be entitled to withdraw the funds from said preconstruction trust account only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the corporate trustee, if any, shall contract for and cause said project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company. In the event there is no corporate trustee, the Commission shall appoint a committee to serve as trustees to contract for and cause said project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission. (1975, c. 768, s. 1; 1977, c. 686, ss. 16, 17; 1979, c. 888, s. 8.)

§ 65-71. Penalties.

(a) (Effective October 1, 1994 — See editor's note) Except as provided in this subsection, a person violating any provisions of this Article, of any order or rule promulgated under this Article, or of any license issued by the Commission is guilty of a Class 1 misdemeanor. Each failure to deposit funds in a trust fund in accordance with this Article is a separate offense. A person who has failed to deposit funds in a trust fund in accordance with this Article and whose delinquent deposits equal or exceed twenty thousand dollars (\$20,000) is guilty of a Class I felony.

(b) The officers and directors or persons occupying similar status or performing similar functions of any cemetery company, cemetery sales organization, cemetery management organization or cemetery broker, as defined in this Chapter, failing to make required contributions to the care and maintenance trust fund and any other trust fund or escrow account shall be liable for any offense based on the failure and upon conviction for the offense shall be punished in the manner prescribed by law. (1943, c. 644, s. 14; 1967, c. 1009, s. 13; 1975, c. 768, s. 1; 1991, c. 653, s. 9; 1993, c. 539, ss. 501, 1281; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session

Laws 1993, c. 539, s. 501, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and shall be fined, imprisoned, or both, in the discretion of the court" in the first sentence of subsection (a).

Session Laws 1993, c. 539, s. 1281, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class I felony" for "Class J felony" in the last sentence of subsection (a).

§ 65-72. Burial without regard to race or color.

(a) It shall be the public policy of the State that all cemetery companies or other legal entities conducting or maintaining public or private cemeteries shall sell to all applicants and bury all deceased human beings on equal terms without regard to race or color. Anything contrary hereto is void and of no legal effect. By laws, rules and regulations, contracts, deeds, etc., may permit designation of parts of cemeteries or burial grounds for the specific use of persons whose religious code required isolation. Any program offering free burial rights to veterans or any other person or group of persons shall not be conditioned by any requirement to purchase additional burial rights or merchandise.

(b) (Effective October 1, 1994 — See editor's note) Any cemetery company or other legal entity violating the provisions of this section shall be guilty of a Class 1 misdemeanor, and each violation of this section shall constitute a separate offense. (1975, c. 768, s. 1; 1993, c. 539, s. 502; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would

be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor," for "misdemeanor, and punishable as provided in G.S. 14-3," in subsection (b).

§ 65-73. Validation of certain deeds for cemetery lots executed by suspended corporations.

Any deed for a cemetery lot or lots which was executed prior to January 1, 1979, and which would have been valid if the charter of the grantor corporation had not been suspended at the time the deed was executed, is hereby validated. (1979, c. 225, s. 1.)

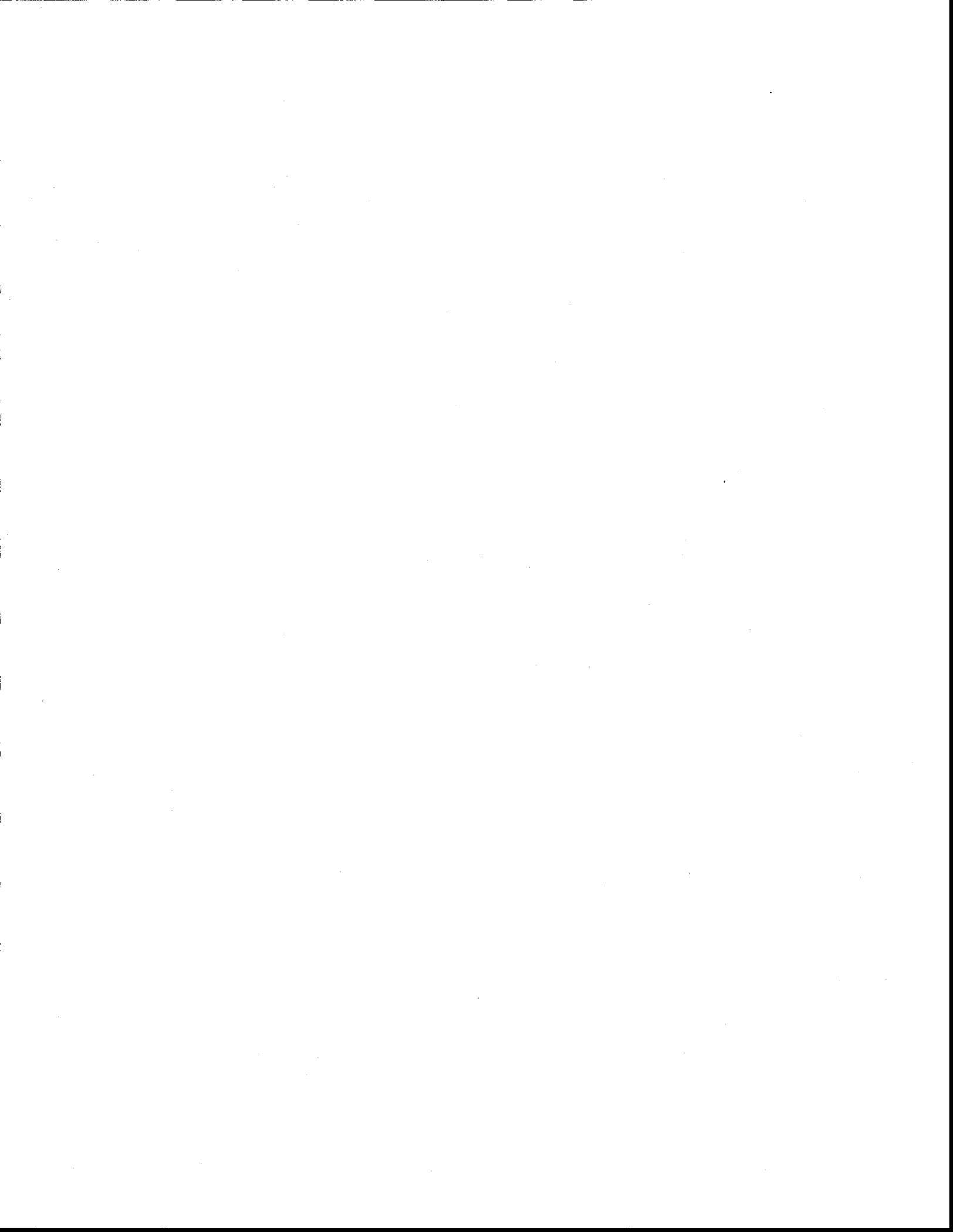
ARTICLE 10.

Access to and Maintenance of Private Graves and Abandoned Public Cemeteries.

§ 65-74. Entering public or private property to maintain or visit a private grave or an abandoned public cemetery with consent.

Any of the following persons, with the consent of the public or private landowner, may enter the property of another to discover, restore, maintain, or visit a private grave or abandoned public cemetery:

- (1) A descendant of the person whose remains are reasonably believed to be interred in the grave;
- (2) A descendant's designee; or



Chapter 5. Cemetery Commission

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CHAPTER 5 – CEMETERY COMMISSION

SUBCHAPTER 5A – ORGANIZATION

SECTION .0100 – GENERAL INFORMATION

.0101 NAME AND ADDRESS

The North Carolina Cemetery Commission of the Department of Commerce is located in Raleigh, North Carolina. The mailing address for the Cemetery Commission is 1100 Navaho Drive, GL-2, Raleigh, North Carolina 27609. The office is open to the public Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding scheduled state holidays.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-51; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993.

.0102 GENERAL PURPOSE

The principal purpose of the Cemetery Commission is to regulate and supervise the activities of cemeteries, cemetery management organizations, cemetery sales organizations, cemetery brokers and individual pre-need cemetery salespeople licensed under the laws of North Carolina.

HISTORY NOTE

Statutory Authority G.S. 65-55; 65-57; 65-58; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0103 AREAS OF RESPONSIBILITY

The Cemetery Commission has the power and duty to adopt rules and regulations to be followed in the enforcement of the North Carolina Cemetery Act.

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0104 FUNCTIONS

The principal function of the Cemetery Commission is to conduct examinations of all licensed cemeteries. In addition to its examination function the Cemetery Commission authorizes the establishment of and licenses cemeteries, cemetery sales organizations, cemetery management organizations, cemetery brokers, and pre-need salespeople.

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0105 EXAMINATIONS

Copies of reports of cemetery examination are available for inspection by affected parties during regular office hours at the Cemetery Commission office. Additionally, one copy of the report of examination is furnished each cemetery examined.

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0106 FEES

In addition to the licensing and penalty fees provided by statute to this commission, the following fees are provided after May 3, 1993:

(1) One dollar (\$1.00) per grave space, mausoleum crypt, and niche when deeded;

(2) Four dollars (\$4.00) per vault when contracted;

(3) Four dollars (\$4.00) per each crypt in a bank of below ground crypts or lawn crypt garden when contracted before completion or one dollar (\$1.00) per each crypt when contracted after completion. An additional one dollar (\$1.00) shall be paid for each crypt when deeded as provided in Item 1 of this Rule;

(4) Four dollars (\$4.00) per pre-need memorial;

(5) Four dollars (\$4.00) per pre-constructed mausoleum crypt or niche when contracted before completion or one dollar (\$1.00) per crypt or niche when contracted after completion. An additional one dollar (\$1.00) shall be paid for each crypt or niche when deeded as provided in Item 1 of this Rule;

(6) All at need merchandise, cash or credit sales, do not require any assessments;

(7) One dollar (\$1.00) per preneed opening and closing of a grave space.

HISTORY NOTE

Filed as a Temporary Amendment Eff. October 5, 1987, for a period of 180 days to expire on April 2, 1988;
Statutory Authority G.S. 65-49; 65-54; 150B-19;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993; March 1, 1988; December 1, 1981.

.0107 CEMETERY LICENSE FEE

The annual cemetery license fee shall be three hundred dollars (\$300.00).

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-54;
Eff. March 1, 1988.

SECTION .0200 – STRUCTURE

.0201 CEMETERY COMMISSION MEMBERS

The Cemetery Commission is established within the North Carolina Department of Commerce by G.S. 65-49. The Cemetery Commission consists of seven members, appointed by the Governor pursuant to G.S. 65-50.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-50;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0202 ADMINISTRATOR OF CEMETERY COMMISSION

The Administrator of the Cemetery Commission is appointed by the Governor upon recommendation of the Cemetery Commission. The administrator shall act as administrative agent for the commission and shall have the authority to perform any act delegated by the Commission.

HISTORY NOTE

Statutory Authority G.S. 65-53(1); 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0203 CEMETERY COMMISSION EXAMINERS

Within the Cemetery Commission there will be a staff of cemetery examiners which, under the supervision of the administrator, conducts examinations of all licensed cemeteries.

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0204 CLERICAL STAFF

Within the Cemetery Commission there is a clerical staff which accomplishes the filing, typing and clerical duties within the Commission.

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0205 MEETINGS

The Commission shall meet at least once in each quarter and more often upon the call of the chairman or written request of at least four commission members.

HISTORY NOTE

Statutory Authority G.S. 65-52; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

* * *

SUBCHAPTER 5B – RULE-MAKING: DECLARATORY RULINGS AND CONTESTED CASES

SECTION .0100 – RULE-MAKING AND DECLARATORY RULINGS

.0101 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Cemetery Commission shall address a petition to:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

(b) The petition shall contain the following information:

- (1) a draft of the proposed rule or a summary of its contents;
- (2) reason for proposal;
- (3) effect on existing rules or orders;
- (4) data supporting the proposal;
- (5) names of those most likely to be affected by the proposed rule, with addresses if reasonably known;
- (6) name(s) and address(es) of petitioner(s);
- (7) a description as to how the petitioner(s) is (are) directly or substantially affected by the proposed rule.

(c) The Cemetery Commission will determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. They will consider all the contents of the submitted petition, plus any additional information they deem relevant.

(d) Within 30 days of receipt of the petition, the Cemetery Commission will render a final decision. If the decision is to deny the petition, the Commission will notify the petitioner in writing, stating the reason therefor. If the decision is to grant the petition, the Commission, within 30 days of submission will initiate a rule-making proceeding by issuing a rule-making notice as provided in the rules.

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-20;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993.

.0102 NOTICE

(a) Any person or agency desiring to be placed on the mailing list for Cemetery Commission rule-making notices may file a request, in writing, furnishing names and mailing addresses to:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

(b) In addition to notices sent to persons requesting them, notice of the rule-making proceedings will usually be sent to the North Carolina Cemetery Association and to all state-licensed cemeteries.

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993; August 1, 1988.

.0103 HEARINGS

(a) Unless otherwise stated in the particular rule-making notice, hearings before the North Carolina Cemetery Commission will be held at the offices of the North Carolina Department of Commerce in Raleigh, North Carolina.

(b) Any person wishing to make an oral presentation is encouraged to submit a written copy of the presentation to the administrator prior to or at the hearing.

(c) A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual wants to speak. Presentations may not exceed 15 minutes.

(d) Upon receipt of a request to make an oral presentation, the Administrator of the Cemetery Commission will acknowledge receipt of the request, and inform the requesting person of the imposition of any limitations deemed necessary to the end that a full and effective public hearing on the proposed rule may be held.

(e) Written submissions, except when otherwise stated in the particular rule-making notice must be sent to:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

Such submission must clearly state the rule(s) or proposed rule(s) to which the comments are addressed.

(f) Upon receipt of such written comments, prompt acknowledgement will be made including a statement that the comments therein will be considered fully by the Cemetery Commission.

(g) The chairman of the commission, or his designate, shall have complete control of the hearing proceedings, including: extension of any time requirements, recognition of speakers, time allotments for presentation, direction of the flow of the discussion, and the time management of the hearing. The chairman, or his designate, at all times, shall take care that each person participating in the hearing is given a fair opportunity to present views, data and comments.

(h) Any interested person desiring a statement of the principal reason(s) for and against the adoption of a rule by the Cemetery Commission and the factors that led to the overruling of the consideration urged for or against its adoption may submit a request addressed to:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993; August 1, 1988.

.0104 TEMPORARY RULES

The North Carolina Cemetery Commission may issue temporary rules in the circumstances described in G.S. 150B-13. A temporary rule shall continue in effect for the period specified in the rule, which in no event shall be in excess of 180 days.

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-13;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. August 1, 1988.

.0105 DECLARATORY RULINGS

(a) Any person substantially affected by a statute administered or rule adopted by the Cemetery Commission may request a declaratory ruling as to:

(1) whether, and if so how, the statute or rule applies to a given factual situation, or

(2) whether a particular agency rule is valid.

(b) The Cemetery Commission will have the sole power to make such declaratory rulings. All requests for declaratory rulings shall be written and mailed to:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

(c) All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing.

(d) Whenever the Cemetery Commission believes for good cause that the issuance of a declaratory ruling is undesirable, it may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the Cemetery Commission will notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

(e) Where a declaratory ruling is deemed appropriate, the Cemetery Commission will issue the ruling within 60 days of receipt of the petition.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-4;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993.

SECTION .0200 – CONTESTED CASES

.0201 CEMETERY COMMISSION HEARINGS

HISTORY NOTE

Statutory Authority G.S. 150B-23; 150B-37;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

.0202 REQUEST FOR HEARING

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-23;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

.0203 NOTICE

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-23;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

.0204 WRITTEN ANSWERS TO NOTICE

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-25(b);
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Repealed Eff. August 1, 1988.

.0205 WAIVER

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-23;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Repealed Eff. August 1, 1988.

.0206 DEPOSITIONS

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-28;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

.0207 DISCOVERY

HISTORY NOTE

Statutory Authority G.S. 65-49; 150B-28;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Repealed Eff. August 1, 1988.

* * *

SUBCHAPTER 5C – LICENSING

SECTION .0100 – CEMETERIES

.0101 APPLICATION AND FILING FEE

Any legal entity wishing to establish and operate a cemetery company, as defined in G.S. 65-48(5) must first obtain a license from this commission. The legal entity shall file written application with the commission on the Commission's Application for Certificate of Authority. This form provides a space for the name of the corporation and cemetery, the names of directors and officers of the corporation, the mailing address of the corporation and the address of the cemetery. A filing fee of eight hundred dollars (\$800.00) must accompany the application. The application form is available by contacting:

North Carolina Cemetery Commission
1100 Navaho Drive, GL 2
Raleigh, North Carolina 27609.

HISTORY NOTE

Statutory Authority G.S. 65-48(5); 65-49; 65-55;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993.

.0102 CEMETERY COMPANY LICENSE

(a) Upon proper application for a cemetery company license and where it appears after investigation that the criteria set forth in G.S. 65-55(c) and G.S. 65-55(f) have been met, the Commission shall issue said license to the applicant, provided that the required license fee has been paid and that not more than one year has elapsed between the time the proposed cemetery company receives the authority to organize and the time it requests its license.

(b) Any cemetery company that does not renew its license by January 1, after its expiration on July 1, shall not be allowed renewal privileges. If the cemetery company wishes to obtain a license it must apply for a new license and fulfill all requirements as if they were applying for a new license.

(c) A designated general manager under G.S. 65-55(c)(4) shall have had at least one year's experience in a management position in a cemetery licensed under the North Carolina Cemetery Act or its equivalent as determined by the Commission on an individual basis.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-54; 65-55;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. March 1, 1984; December 1, 1981.

.0103 CHANGE OF CONTROL

Any entity wishing to purchase or acquire control of an existing cemetery company shall first make written application to the Cemetery Commission on the commission's Application for Change of Control. This form provides space for the name and address of the present and proposed owner, along with the name of the corporation and the name of the cemetery. This form can be obtained by writing:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

This form must be accompanied by a two hundred dollar (\$200.00) filing fee. The commission also requires the following:

- (1) an examination be made to establish compliance to trust fund requirements;
- (2) a signed certificate assuming liabilities of the existing cemetery company;
- (3) a financial statement of the existing cemetery company showing net worth;
- (4) certification by title insurance policy or by certificate of an attorney-at-law that the cemetery land, subject to appropriate acreage requirements, is owned in fee simple, free of all encumbrances;
- (5) a financial statement of proposed owner, showing net worth and a statement of the proposed owner's experience in the cemetery business.

No one shall take over the operation of a cemetery company in anticipation of a change of control until all necessary information concerning that change of control has been submitted to the administrator of the Cemetery Commission. No one shall change control of a cemetery company without first obtaining approval of the Cemetery Commission. Once a change of control has been approved by the Cemetery Commission, the change of control must be completed within 90 days of the date of the Cemetery Commission's approval. If the change of control is not completed within 90 days of the date of the Cemetery Commission's approval, then the entity wishing to effect the change of control will be required to make a new application to the Cemetery Commission in accordance with provisions of this Rule. Upon completion of the change of control, the entity requesting the change of control shall notify in writing the Administrator of the Cemetery Commission of the completion. A representative of the buyer and the seller shall be present at any meeting when the commission is going to consider the change of control application.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-53(2); 65-59;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993; March 1, 1990; October 1, 1989; March 1, 1984.

.0104 QUALITY SPECIFICATIONS

All cemeteries must file by September 1, 1979 plans and specifications showing minimum quality standards of any vaults, crypts or markers sold.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-53(7);
Eff. September 1, 1979.

.0105 MEETING REQUIREMENT

Any application and all related information for a new cemetery license or a change of control of a cemetery must be received by the administrator of the Commission ten regular working days before the meeting date the item is to be heard.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-55;
Eff. March 1, 1984.

SECTION .0200 – CEMETERY SALES ORGANIZATIONS: MANAGEMENT ORGANIZATIONS AND BROKERS

.0201 APPLICATION AND FILING FEE

Any legal entity wishing to establish and operate a cemetery sales organization, cemetery management organization or a cemetery broker, as each are defined under G. S. 65-48, must first obtain a license from this commission. The legal entity shall file written application with the commission on the Commission's Application for Cemetery

Broker, Sales and/or Management Contractor License. This form provides space for applicant's name and address; space is also provided for employment, references and criminal record for an individual, corporate officer or partner, as the case may be. The application form is available by contacting:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

The following documents shall accompany this application:

(1) If individual, officer or partner has not been licensed as a cemetery salesman for a period of two years, the application is to be accompanied by a written request for waiver setting forth at least one year general cemetery experience.

(2) Corporate applications are to be accompanied by:

(a) certified copy of that portion of the minutes of the corporation wherein the officer named on the application was elected an officer,

(b) certified copy of that portion of the minutes of the corporation wherein the officer named on the application was authorized to file the application on behalf of the corporation.

(3) All brokerage, sales or management contracts.

Filing fees shall be in accordance with G.S. 65-57(c).

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-57;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993.

.0202 LICENSE

Licenses for sales organizations, management organizations and brokers shall be granted where the Commission has received the proper fee, information and documents called for in G.S. 65-57(b) (1) to (5) and G.S. 65-57(c) and where it determines that, based on the information and documents, the applicant is of good moral character, or, in the case of a business organization, employs and is directed by personnel of good moral character.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-57;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

SECTION .0300 - INDIVIDUAL PRE-NEED SALESPeOPLE

.0301 APPLICATION AND FILING FEE

Any person who offers to sell pre-need grave spaces, mausoleum crypts, niches, memorials, vaults or any other pre-need cemetery merchandise or services that are authorized for any cemetery, cemetery sales groups or cemetery management groups must first obtain a license from this commission. Applications for a license must be filed with the Commission on their Application for Persons Selling Pre-need Cemetery Property together with a fee in the amount of twenty-five dollars (\$25.00), fifteen dollars (\$15.00) of which shall constitute an application fee and ten dollars (\$10.00) of which shall constitute annual license fee. The form provides space for applicant's name, past address,

previous employment and criminal record. The application form is available by contacting:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

This license has an expiration date of June 30 in each year.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-58;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993.

.0302 LICENSE

Licenses shall be granted pursuant to G.S. 65-58 upon proper application and determination by the Commission that the applicant is possessed of good moral character.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-58;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0303 DISPLAY

Each salesperson licensed by the Commission shall display his or her license in the office of each cemetery he or she represents. If extra copies are needed, a fee of one dollar and fifty cents (\$1.50) will be charged for each duplicate license. Duplicate copies can be obtained by contacting:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-58;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993.

.0304 CEMETERY OWNER

A cemetery owner who sells pre-need cemetery property and merchandise as classified in G. S. 65-58 of the laws of North Carolina must obtain a sales license as stated under G.S. 65-58.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-58;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0305 TRAINEE

At least one licensed salesperson must be present at the time that any pre-need property is sold and that any trainee, when accompanied by a licensed salesperson, is not required to be licensed.

HISTORY NOTE

Statutory Authority G.S. 65-49;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.

.0306 REFUND

If a licensed salesperson terminates his employment with a cemetery, no refund shall be allowed. If a sales license applicant terminates employment with a cemetery after offering to make or making a preneed sale but before receiving a license, no refund will be paid.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-58;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. December 1, 1981.

.0307 RENEWAL

Before July 1 of each year, each licensed salesperson shall pay a license renewal fee of ten dollars (\$10.00) per year. Any individual

preneed salesperson that does not renew their license by January 1 after its expiration on July 1 shall be denied renewal privileges. If the person wishes a license they must apply for a new license.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-58;
Eff. December 1, 1981.

.0308 CONTRACT IDENTIFICATION

Each contract for the sale of interment rights, merchandise and services shall contain the name and license number of the salesperson witnessing the signature of the purchaser on the contract.

HISTORY NOTE

Statutory Authority G.S. 65-49; 65-58;
Eff. December 1, 1993.

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SUBCHAPTER 5D - TRUST FUNDS

SECTION .0100 - MAINTENANCE AND CARE FUNDS (PERPETUAL CARE FUNDS)

.0101 REPORT

Each licensed cemetery shall make a report of deposits to the perpetual care fund to be completed and mailed to the office in Raleigh by the last day of each month. The form to be used is the Report of Grave Spaces for the Month of _____. The form provides a space for deed number, date of deed, date of contract, purchaser, lot number, section, number of spaces deeded and amount due trust fund. This form can be obtained and must be returned to:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

*History Note: Statutory Authority G.S. 65-49;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993; September 1, 1979.*

.0102 LOCATION OF FUND

No person will be allowed to withdraw or transfer all or any portion of the corpus of the care and maintenance trust funds of any cemetery to any depository outside the State of North Carolina. Also the Commission will not approve the creation of a new perpetual care trust fund as called for under Chapter 65-55 of the General Statutes unless same is deposited with a trustee in the State of North Carolina.

*History Note: Statutory Authority G.S. 65-49; 65-55; 65-61;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.*

.0103 TRANSFER OF FUNDS

Any cemetery which desires to transfer their trust agreement must provide:

- (1) copy of new proposed perpetual care trust fund agreement,
- (2) a financial statement of the depository where the funds will be held, and
- (3) as much information as possible about proposed new trustee.

*History Note: Statutory Authority G.S. 65-61;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978.*

.0104 FINE FOR LATE DEPOSITS

Any fine levied under G.S. 65-64(a) shall be one dollar (\$1.00) a day for each grave space, niche, and mausoleum crypt a deposit is delinquent on subject to a maximum fine of one hundred per cent of the amount that was or is late to the care and maintenance trust fund.

- (1) The first time a delinquency is found the cemetery will receive a 20 day notice in writing to cure the violation regardless of whether or not the delinquency was corrected before an examination by this Commission. The fine will start on the 21st day after notice of the violation if the money has not been deposited.
- (2) Once a cemetery has received one 20 day notice, the fine for any later delinquency will begin running on the first day of delinquency. No notice of delinquency need be sent before a fine is incurred, and the fine may reach the maximum amount of one hundred percent of the amount that was or is owed or deposited late to the care and maintenance trust fund before the delinquency is discovered.
- (3) A cemetery which has not been notified of or fined for a delinquency within the last five years will

receive a new 20 day notice in the event of any delinquency.

- (4) In the event a delinquency is found in a cemetery's care and maintenance trust fund and the cemetery does not make up the deposit, if still owed, and/or the fine within 20 days after notice from the Commission that a fine is due, then the Commission will take immediate steps to revoke the cemetery's license.
- (5) It is the intent and policy of this Commission to levy a fine only for substantial, flagrant, or repeated late or delinquent deposits.

*History Note: Statutory Authority G.S. 65-49; 65-54(a);
Eff. December 1, 1981.*

.0105 DEPOSIT FOR MULTIPLE BURIALS

(a) Each grave space will require one care and maintenance trust fund deposit regardless of the number of interments to be made in the space.

(b) Each mausoleum crypt will require one care and maintenance trust fund deposit for each casket space.

(c) Each niche will require one care and maintenance trust fund deposit for each set of cremated remains to be inurned in the niche, except if two or more cremated remains are to be used there will be only one deposit if the niche was sold on one contract.

*History Note: Statutory Authority G.S. 65-49;
Eff. September 1, 1983.*

.0106 CONTRACT DISCLAIMER

Each contract for the sale of a grave space, mausoleum niche or crypt shall state that the amount deposited in a perpetual care trust fund from the proceeds of the sale are for the perpetual care of the grave space, mausoleum niche or crypt only and does not include deposits which may be subsequently required for perpetual care of monuments, markers or other merchandise.

*History Note: Statutory Authority G.S. 65-49;
Eff. April 1, 1987.*

.0107 EXCESS FUNDS

If a cemetery collects Care and Maintenance Trust Funds in excess of the mandatory trust fund amount, the excess must be deposited into the trust fund by the last day of the following month. Excess funds may not be withdrawn from the trust fund or used to offset past or future deposits.

*History Note: Statutory Authority G.S. 65-49; 65-64;
Eff. May 3, 1993.*

**SECTION .0200 - PRE-NEED CEMETERY MERCHANDISE: PRE-CONSTRUCTED
MAUSOLEUMS AND BELOW GROUND CRYPTS TRUST FUNDS**

.0201 REPORT

Each licensed cemetery shall make a report of deposits to the pre-need cemetery merchandise and pre-constructed mausoleum and below ground crypt trust fund to be completed and mailed to the office in Raleigh by the last day of each month. The form to be used is the "Monthly Report and Deposit Record for Pre-need Cemetery Merchandise, Pre-Constructed Mausoleums and Services Not Delivered." This form provides space for trustee's name, fund account number and the name of the savings institution used. It also provides space for the name of the purchaser, date of the contract, number of the contract, the full sales price, the total amount required, the amount deposited, and the total amount deposited to date. Copies of this form can be obtained from and must be returned to:

North Carolina Cemetery Commission
1100 Navaho Drive, GL-2
Raleigh, North Carolina 27609.

*History Note: Statutory Authority G.S. 65-49;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993; September 1, 1979.*

.0202 DELIVERY

(a) Vaults and crypts shall not be considered delivered unless installed or stored on the cemetery premises or stored off premises by a supplier. If vaults are not to be installed, the contract between cemetery and purchaser must so state in bold print that purchaser has accepted above ground delivery. If vault is to be installed, then the contract must be broken down into sales cost and installation cost.

(b) Markers, bases and vases shall not be considered delivered unless installed or stored at the cemetery or if stored off premises by a supplier, there shall be no additional charge for delivery or freight, unless specified in bold print in the contract. If vaults, crypts or other merchandise are stored off premises the cemetery company must submit to the Cemetery Commission not less than annually a report by a certified public accountant of each item which has been purchased through a North Carolina cemetery company and which at the date of the report was then in storage and properly designated the property of the cemetery company's customer and not the property of the supplier. If vaults, crypts or other merchandise are stored at the cemetery the cemetery company must submit to the Cemetery Commission not less than annually a report by a certified or licensed public accountant of each item which has been purchased and which at the date of the report was then in storage and properly designated the property of the cemetery company's customer.

(c) If opening and closing of crypts at the time of interment are not included in the cost of this merchandise, then it must be so stated in bold print on the contract between cemetery and purchaser.

*History Note: Statutory Authority G.S. 65-49;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. May 3, 1993; July 1, 1988; April 1, 1987; September 1, 1979.*

.0203 TRUST ACCOUNTS

(a) Trust accounts must be established pursuant to an agreement with a financial institution that withdrawals may be made only with the signature of both the cemetery company's designee and the North Carolina Cemetery Commission's authorized designee. Trust accounts must be clearly designated as trust accounts. For the purposes of withdrawal, the Administrator of the North Carolina Cemetery Commission shall be the cemetery commission's authorized designee.

(b) These trust accounts are not joint accounts, however, they are restricted accounts that require the Commission's authorized designee to sign before any withdrawal is made.

(c) The cemetery company must file a statement with the North Carolina Cemetery Commission setting out

the name and the position or title of anyone who is authorized to sign for withdrawals from the account for the cemetery company.

(d) These withdrawals can be made no more frequent than once a month. The cemetery company must give the North Carolina Cemetery Commission 20 days written notice of any proposed withdrawal, stating the amount to be withdrawn and the justification for withdrawal.

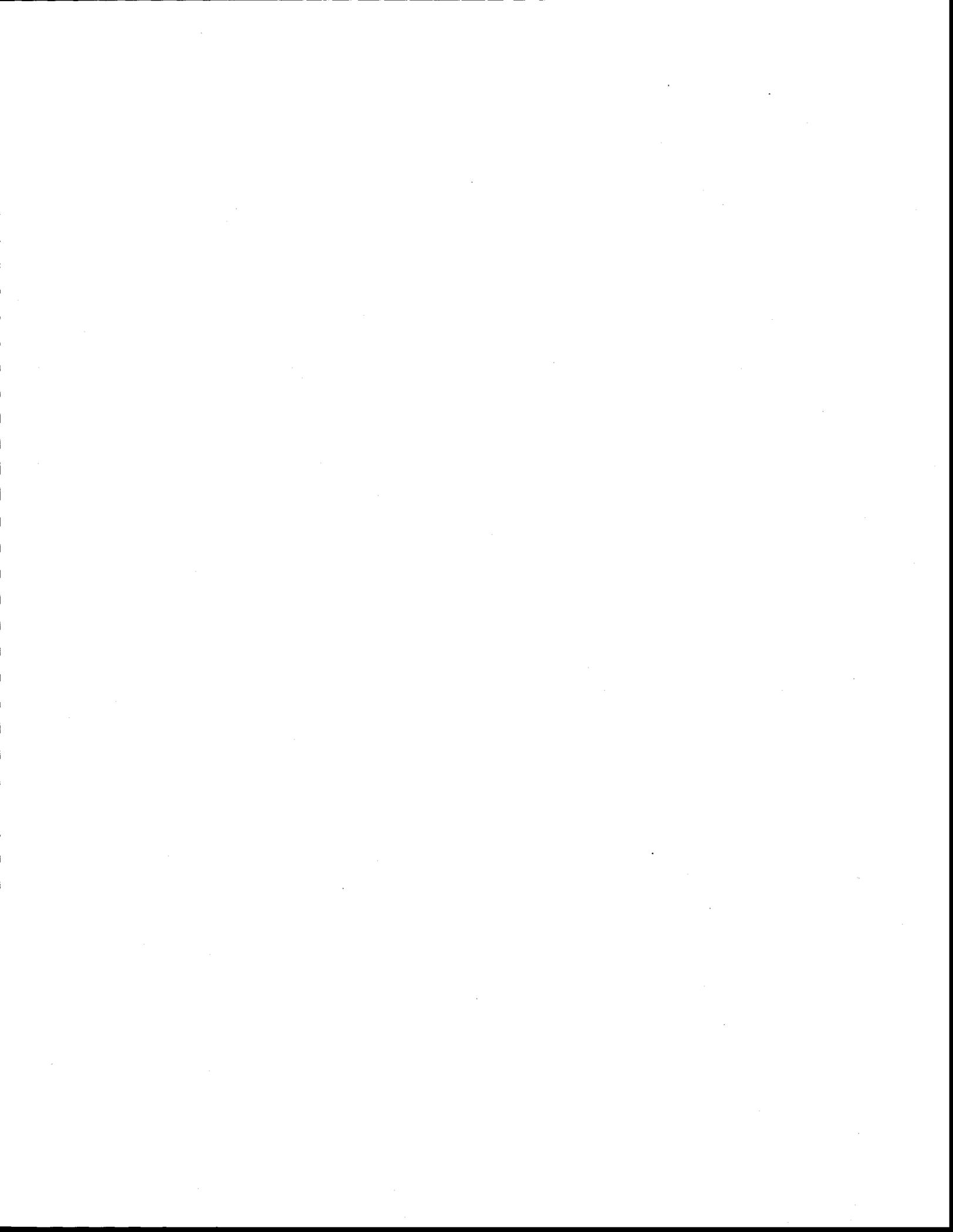
(e) Full disclosure of the amount in the trust account must be made available to the North Carolina Cemetery Commission by the financial institution any time during the financial institution's normal business hours. A copy of each cemetery company's pre-need contract must be on file with the Commission before any withdrawals can be authorized.

(f) Interest earned on trust accounts may be used to offset future deposits or may be withdrawn with the written approval of the Administrator.

*History Note: Statutory Authority G.S. 65-49; 65-66(b)(4);
Eff. September 1, 1979;
Amended Eff. May 3, 1993.*

.0204 EXCESS FUNDS

*History Note: Statutory Authority G.S. 65-49;
Eff. June 23, 1980;
Amended Eff. April 1, 1987;
Repealed Eff. May 3, 1993.*



APPENDIX D

LEGISLATIVE PROPOSAL I



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

98-LVZ-74C

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Cemetery Reg. Changes.

(P)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED
4 BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON
5 CEMETERY ISSUES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 65-53 is amended by adding the
8 following new subdivisions to read:
9 "(9) To ensure that cemetery companies do not discourage
10 reasonable competition with providers of services
11 and products for cemeteries.
12 (10) To ensure that owners of rights to grave spaces,
13 mausoleum spaces, and columbarium spaces and
14 providers of services and cemetery products shall
15 have reasonable access to cemeteries.
16 (11) To ensure that contracts for the sale of personal
17 property and services, whether preneed or at-need,
18 contain the disclosures required pursuant to G.S.
19 65-66(d).
20 (12) To adopt temporary rules pursuant to Chapter 150B
21 of the General Statutes to implement subdivisions
22 (9), (10), and (11) of this section until such time
23 as permanent rules are adopted."
24 Section 2. G.S. 65-66(d) reads as rewritten:

1 "(d) Any contract for the sale of personal property ~~and/or or~~
2 ~~services services, whether preneed or at-need,~~ shall ~~state~~
3 ~~disclose separate costs~~ the following:

4 (1) The cost for each item of personal property,
5 property and for each act of installation or other
6 service required by the contract, and for each
7 other item of services included in the contract,
8 including any costs for interment, entombment, or
9 inurnment;

10 (2) Specification of whether opening and closing of a
11 grave space, mausoleum space, or columbarium space
12 is included in the contract, and, if not, the
13 current prices for opening and closing and a
14 statement that these prices are subject to change;

15 (3) Any requirements or costs relating to memorial
16 markers, including any duties of the grave space,
17 mausoleum space, or columbarium space owner if the
18 owner desires to have an outside provider provide
19 the marker and any costs relating to having an
20 outside provider provide and place a marker;

21 (4) A statement describing, in language that is
22 readable by a person of average intelligence,
23 experience, and education, the nature of the
24 property right in the grave space, mausoleum space,
25 or columbarium space."

26 Section 3. G.S. 65-66 is amended by adding a new
27 subsection to read:

28 "(n) A cemetery company shall not prohibit providers of
29 cemetery products or services from providing products or services
30 to persons having rights in a grave space, mausoleum space, or
31 columbarium space so long as the provider is properly bonded and
32 qualified to provide the product or service. This subsection
33 does not prohibit a cemetery company from adopting reasonable
34 rules to ensure that these providers follow procedures
35 established by the cemetery company to fulfill its obligation to
36 its purchasers."

37 Section 4. This act is effective upon becoming a law.
38

